

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1499 OF 1994

Shree Samarth Vyayam Mandir	.. Petitioners
V/s	
The State of Maharashtra & Anr.	.. Respondents

Mr.Virag Tulzapurkar for the Petitioners.

Ms.S.M.Dandekar, AGP for the Respondents.

**CORAM: S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.**

DATE : 22.9.2004.

P.C.:

1. By this petition, the Petitioners are challenging the acquisition proceedings adopted against the Petitioners. It appears that a large portion of the first floor of the Petitioners building was originally requisitioned in 1965 for the purpose of Rationing Office under the Bombay Land Requisition Act and was being used as an administrative office of the Rationing Department. The said portion admeasures about 2297.75 sq.ft. The Bombay Land Requisition Act came to an end in the year 1988 and thereafter there was correspondence between the parties and some meetings were also held between the Petitioners and the Respondent No.1. It appears that during the aforesaid meetings the Petitioners were assured by the Respondents that the said portion on the first floor would be vacated and the same would be handed back to the petitioners. Thus the Respondents had assured that they will vacate the said premises. However, it appears that instead of vacating the said premises the Respondents had initiated

1894 to acquire the aforesaid portion on the first floor. It may be noted here that the said portion with regard to which the acquisition proceedings have been initiated by the Respondents is only the part of first floor of the Petitioners building consisting of ground plus three floors.

2. The main challenge in the petition is that the aforesaid acquisition proceedings was initiated pursuant to the Notification published under Section 4 of the Land Acquisition Act, 1894 dated 24.12.1992 and 31.12.1992 are bad in law, inasmuch as no hearing at all was given to the Petitioners under Section 5A of the Land Acquisition Act, though the Petitioners had lodged the objections and had sought personal hearing in that behalf. There is no affidavit in reply filed on behalf of the Respondent-State controverting the above mentioned challenge of the Petitioners regarding not giving of a hearing under Section 5A of the Land Acquisition Act. Subsequently it appears that the declaration under Section 6 of the Land Acquisition Act was also made. Thereafter the present petition has been filed. This Court while admitting the petition has granted interim relief whereby the Respondents have been restrained from proceeding further in the aforesaid land acquisition proceedings.

(3)

3. Mr.Tulzapurkar, the learned Counsel for the Petitioners has referred to and relied upon the Judgment of the Hon'ble Supreme Court in the case of **Shri.Mandir Sita Ramji V/s.Governor of Delhi & Ors. - AIR 1974 SC 1868** wherein, in paragraph Nos.5 & 6 of the Judgment, the Hon'ble Supreme Court has very categorically held that as per the provisions of Section 5A of the Land Acquisition Act, it is a strict statutory duty of the Collector to enquire into the objections and make the recommendation, and failure of the same would result in depriving the person of his property and would result in gross injustice. The Supreme Court has construed that granting a personal hearing to be mandatory. Mr.Tulzapurkar, the learned Counsel for the Petitioners thereafter referred to and relied upon another Judgment of the Hon'ble Supreme Court in the case of **Farid Ahmed Abdul Samad and Another V/s. The Municipal Corporation of the City of Ahmedabad and Another - AIR 1976 SC 2095** wherein the Supreme Court has clearly held that heart of Section 5A of the Land Acquisition Act is the hearing of objections, and under sub-section (2) of that section a personal hearing is mandatorily provided for.

4. In the matter before us there is no dispute that no

such personal hearing was given to the petitioners. There is no affidavit in reply filed by the Respondents. Under these circumstances, for non compliance of the

(4)

provisions of Section 5A of the Land Acquisition Act, the aforesaid land acquisition proceedings cannot be sustained at all. Petition is therefore made absolute in terms of prayer clauses (a), (b) and (c), however with no order as to costs. It may be noted here that the other contentions raised by the learned Counsel for the Petitioners are not considered.

(S. RADHAKRISHNAN, J.)

(S. J. VAZIFDAR, J.)